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FCC Meetings – January 23, 2006

On January 6, 2006, Sorenson Communications submitted an ex parte presentation entitled "Regulating VRS Hardware and Software is Contrary to the Intent of Section 225 and to the Interest of the Deaf Community." Below are Communication Service for the Deaf's (CSD's) brief responses to several points raised in this presentation.

Blocking violates principles of functional equivalency. Sorenson suggests that VRS providers who block outgoing calls are not failing to provide any functions otherwise available through voice telephone services. In fact, blocking causes the denial of at least two basic telephone functions – indeed *the two most basic* functions – that are available through conventional telephone service: (1) the ability to swiftly access a communications assistant (i.e., a dial tone) for every outgoing VRS call and (2) the ability to receive all incoming calls.

> Ability to swiftly get through to a CA – As noted in the recommendation made by the Consumer Advisory Committee (CAC), when a hearing person picks up a telephone to make a call, that individual can immediately access anyone, at anytime, regardless of the telephone carrier to which that person or the called party subscribes. This same capability is not being made available to those VRS users who are restricted to one service provider. These consumers are presently unable to switch to another provider to make their calls, even when their primary provider has no dial tone (i.e., is operating at capacity). Although it might take several minutes for an interpreter to become free, these "captive" consumers have no choice but to wait. So long as VRS is dependent on the use of interpreters, and it will be for the foreseeable future, it will never be functionally equivalent to what voice telephone users have if blocking is allowed.
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> In addition, so long as blocking is in place, the limited pool of sign language interpreters in the United States will not be put to its best use. Limiting any group of interpreters to the customers of one provider makes inefficient use of this limited supply of interpreters.

Allowing the entire universe of interpreters to be available to all users will make sure that all interpreters are used to the maximum extent possible. Over time, each provider will come to know what to expect in the way of call volume, and will be able to use this knowledge to improve interpreter efficiencies. Indeed, this is no different than what traditional text-to-voice relay providers do now with respect to the hiring of their communication assistants.

Ability to receive all incoming calls – A VRS system that blocks outgoing access leaves its users with no choice but to obtain more than one device to make calls through any provider (i.e., to be able to swiftly make outgoing calls when one provider is operating at capacity). The problem is that when a person has multiple devices for outgoing calls, *the routers* for the two devices *may direct incoming* calls to the device that is not turned on. If this occurs, the VRS user will miss the call. Alternatively, the *wrong device* (i.e., the one not receiving the unsolicited incoming call) may be turned on, which will also result in the call being blocked. The ability to receive incoming calls from anyone, at any time, is a very basic "function" that is available to voice telephone users, but is being denied to individuals who are subject to a VRS blocking policy. Again, this violates the mandate for relay service to be functionally equivalent to voice telephone services.

The FCC should respond to the wishes of deaf VRS consumers. Hundreds of deaf individuals and virtually every national deaf consumer organization have filed comments with the FCC urging a prohibition against VRS blocking. Sorenson's suggestions to the contrary (for example, Sorenson's ex parte title statement that regulating VRS is "contrary to the interests of the deaf community") erroneously presume to know what the deaf community wants. As Sorenson itself notes, the test of what is functionally equivalent should turn on what consumers want (test should "focus[ ] on "end-user *customers' real-world perceptions* as to whether VRS and voice services provide functions that are materially equivalent; the FCC should use the *perspective of the customer* faced with differing services" as a significant factor in determining what is functional equivalency. [pages 28-29, ex parte, citing to American Broadcasting Company v. FCC, 663 F. 2d 133, 139 (D.C. Cir. 1980]). Under this very test, the FCC has no choice but to ban blocking, because consumers have unanimously come forward to argue that it is *their perception* that blocking does not enable VRS providers to offer a service that is functionally equivalent to voice telephone service.

VRS is no longer in its infancy. VRS now handles over 2 million minutes per month. Its future as an industry, however, is very uncertain in large part because providers are still not receiving compensation on a level playing field. Though Sorenson attempts to assert that it does not have market power

(claiming to only have 8 percent of the market), there are presently no accurate estimates of the full size of the VRS market, nor any guarantees that the full market of potential deaf and hard of hearing users could be located and tapped for these services. What is known, however, is that in the existing market of users, Sorenson clearly retains dominance, and that VRS is headed in the direction of becoming a monopoly. As a program that is federally administered and supported by the general subscriber base, the federal government should have an interest in ensuring that this industry is subject to robust competition, not monopolistic behavior.

A light regulatory touch is inappropriate in this instance. Sorenson erroneously assumes that a no-blocking rule will interfere with VRS innovation and deprive providers of their ability to "define and differentiate their service offerings and control the quality of their services" (page 5, *ex parte*). To the contrary, a no-blocking rule will encourage, rather than discourage new entrants, and consequently greater VRS technological innovation. In fact, with a no-blocking rule, there will be even greater incentives for providers to win customers with better technology and differentiated services that utilize the most highly qualified interpreters. Sorenson itself notes that (page 9, *ex parte*) that, "[a]ny provider may win customers away from Sorenson by developing a service that surpasses that of Sorenson in image quality, ease of use, or any number of other features that can attract new users that currently use a text telephone ("TTY") or other technologies." Without exclusivity, all providers will be put on a level playing field and will have more interest in creating new innovations to compete for customers in a competitive VRS marketplace.

In any event, the FCC should be careful not to place too much reliance on market forces as a means for ensuring functionally equivalent relay access. Historically, the needs of people who are deaf have never been adequately addressed by market forces; this was the very reason that Congress needed to pass Title IV of the ADA, as well as the long string of telecommunications access laws before and after it (including statutes on hearing aid compatibility, closed captioning and Section 255 of the Telecommunications Act of 1996). It is also the reason that Congress was so explicit in providing guidance to the FCC as part of its directive to develop comprehensive minimum relay standards. Congress did not merely direct *the establishment* of a nationwide relay program; it laid out *item by item* many of the ways it wanted these services to be provided, in order to achieve telephone functional equivalency. See 47 U.S.C. §225(d)(1) and (2). In fact, Congress took this action precisely because market forces had failed – for the first 100 years of telephone service – to provide deaf and hard of hearing people with telephone services that could begin to come close to conventional voice telephone service. *Nothing* about the ADA suggests that Congress wished to leave to

market forces the provision of these services – indeed, everything about relay services has been strictly regulated since their inception, to make sure that consumers receive services that parallel voice telephone services.

VRS is a federally administered program mandated by a civil rights statute. Sorenson claims that because there are no voice services that offer customers discretion to place outbound calls through competing providers of the same service, its blocking practices do not make its service functionally different from other voice services. Sorenson ignores more than a century of Congressional and regulatory efforts to achieve a telephone system that is interoperable, interconnected, and seamless for its users. Many of these are detailed in the interoperability petition filed on February 15, 2006 and need not be repeated here. Sorenson's claims also ignore new efforts by this Commission to ensure network neutrality for consumers wishing to access Internet services. *See* CSD *ex parte* letter, dated December 15, 2005.

In support of its allegations, Sorenson points the FCC to a list of communications services that limit their subscribers' choice of service provider. However, every one of the services on Sorenson's list are provided to the public for a fee, in a private market that is guided by competitive forces which simply do not exist in the VRS marketplace. Unlike any of these services, VRS is provided pursuant to a civil rights statute designed to end years of discrimination against people with disabilities. The FCC has said that VRS, like TRS, is an accommodation that is designed to put people who are deaf and hard of hearing on an equal footing with their hearing peers. *Telecommunications Relay Services and Speech to Speech Services for Individuals with Hearing and Speech Disabilities,* Report and Order, Order on Reconsideration, and Further Notice of Proposed Rulemaking, CC Dkts. 90-571, 98-67; CG Dkt. 03-123*,* FCC 04-137, 19 FCC Rcd 12475 (June 30, 2004) (2004 TRS Order), ¶179. The NECA fund, supported by money collected from all telephone subscribers, cannot be used to support discriminatory practices that in any way deny users functionally equivalent service.

In addition, the FCC has previously ruled that, as a fund created with the explicit purpose of supporting an accommodation for people with hearing loss, the NECA fund is not intended to further company profits. 2004 TRS Order at ¶¶177-179. Business principles that guide private industries to yield significant profits for their shareholders do not have any place in a federal program specifically designed to remedy discrimination. Contrary to Sorenson's suggestion, the fact that VRS is provided under a federal program has *everything* to do with the need for a no-blocking rule.

Finally, even if what Sorenson says it true, i.e., even if consumers are not permitted to make outgoing calls through competitors in certain *private* industries, VRS providers should not be permitted to block calls to other providers precisely because VRS *is* interpreter-dependent. In other words, regardless of what is done in private industries, banning VRS blocking is still well within the intent – and in fact the objectives – of Congress to put deaf and hard of hearing VRS consumers on a level playing field with hearing individuals, who can (1) pick up a phone and immediately get a dial tone, and (2) receive incoming calls from anyone, at any time through a single device.

Blocking outgoing and incoming calls is dangerous in an emergency. Sorenson has outlined an E911 proposal, which it claims will be sufficient to respond to emergency callers.[1] But the company fails to address the fact that allowing a VRS provider to block outgoing calls through other providers can be extremely dangerous. Although Sorenson suggests that it will have no problem meeting user needs in emergencies because its network is "large and geographically dispersed," the fact remains that if *any* provider is operating at full capacity, consumers need a way to make their emergency or urgent calls through a different provider. As the CAC has stated, blocking in this situation "could have disastrous consequences, especially during a national crisis or a weather disaster when one provider's network may be shut down or exceedingly busy."

In addition, Sorenson neglects to address the problems that will occur in an emergency if someone tries to reach a VRS user that has two devices. Again, if a person has multiple video devices, either the routers for the two devices or the devices themselves may direct incoming calls to the device that is not turned on, and the call will be missed. In addition to creating a problem in community or nationwide emergencies when friends, relatives or emergency authorities are trying to contact VRS users who have more than one device (think back to 9-11), this will pose problems for emergency call centers attempting to return calls.

An exclusivity policy is an inappropriate solution for the recovery of investments. The suggestion that a no-blocking rule would limit the ability of VRS providers to recover their investments in video equipment development is not only incorrect and patently unfair to VRS users, it twists the ADA's civil rights mandates into becoming a business enterprise. First, there are other ways to recoup investments in the manufacture and distribution of equipment – for example, through the sale of that equipment to consumers and universal service type distribution programs. Second, the

[1] Contrary to Sorenson's suggestion, other VRS providers did not request Sorenson to develop an emergency call handling solution as an industry standard (pages 17-18, *ex parte*) . Rather other providers suggested that all providers can work together on such a standard.

FCC has previously prohibited use of NECA compensation to recover investments in the development and distribution of equipment. Rather, the FCC has always interpreted the ADA's TRS mandates to require the provision of relay services, not the manufacture and distribution of equipment used with those services. Although CSD would not be opposed to the recovery of expenses associated with equipment ventures through NECA reimbursement, given past practice, we believe that such expenses should be reimbursed separately from expenses connected to the provision of relay service, and that a Commission decision to begin reimbursing for these equipment expenses would, at a minimum, require a rule change (with notice and an opportunity for comment on such proposals). In other words, if the FCC believes that such equipment expenses should be compensated, then it needs to clearly say so and set up a separate mechanism to ensure that all providers can reap this benefit. CSD does believe that reasonable compensation for research and development related to the provision of services (e.g. the handling of emergency calls, routing of calls, etc.) is appropriate from the NECA fund.

Should the FCC decide not to reimburse for equipment, any consumer can already purchase D-links (i2eye devices) in retail establishments. One caveat – while these video devices do contain instructions for installation, these are printed in English. The ability of most VRS users (whose native language is ASL, not English) to install these devices on their own is questionable at best. It would appear appropriate then, for the FCC to reimburse VRS providers for setting up end user hardware and making system connections of video devices used for VRS calls. In addition, it would be appropriate to reimburse providers for helping individuals troubleshoot problems in the use of these devices. The purpose of the latter service would be to help identify the source of the problem: the video hardware, the Internet service provider, a firewall, etc. One possible means of reimbursing for such installation and troubleshooting services would be through a flat fee per installation or troubleshooting occurrence. This flat fee could be based on an average of provider costs for administering such services, and would be kept separate and apart from the VRS per minute rate. On the other hand, repair and maintenance associated with the video devices themselves should be treated the same as the repair and maintenance of any telephone piece of equipment. For example, if a TRS user has a problem with a TTY, that person must request a repair from the manufacturer of the TTY, not the TRS provider, just as a hearing person who has trouble with a conventional voice telephone must now go to the manufacturer of that phone for assistance.

A no-blocking rule will not hurt quality control. Sorenson claims that if the FCC forces providers to separate out the provision of their equipment from their services, it will not be able to control the quality of the interpreters used

by other providers, or other provider equipment. This statement is misleading. When consumers use a particular provider's interpreting service, they know which provider they are using. If they come upon an interpreter who is not sufficiently qualified, they are free to switch to a different provider. Of course, this is not currently the case for Sorenson's users.

VRS providers offer services that are akin to common carrier services.
Sorenson suggests that it should not be subject to any of the common carrier requirements under Title II of the Communications Act because these apply only to common (telecommunications) carriers. What Sorenson misses is that the relay section of the ADA is itself contained in Title II of the Act, and that everything about this mandate and its legislative history confirm that this section was intended to provide services that are comparable to voice telephone services provided by common carriers. Moreover, even if Sorenson is correct in saying that not *all* Title II rules should be applicable to VRS providers, certainly those rules that are necessary to achieve functional equivalence with voice services must be applicable. The California petition lays out in further detail the ways in which VRS providers should be considered common carriers, and subject to certain common carrier regulations.

Conclusion
As the first provider to offer VRS in the United States, CSD has always strived to make sure that its VRS service fully meets the needs of VRS consumers. It is for this reason that CSD has never prohibited customers who have equipment provided by CSD from accessing the VRS services of other providers. At present, there are not one, but two other VRS providers who are engaging in such exclusionary practices. For the reasons noted above, in addition to the arguments made in the California Coalition Petition filed in February 2005 as well as CSD's various prior ex parte presentations, we urge the Commission to act swiftly in banning all VRS blocking practices.